

## REMARKS/ARGUMENTS

Claims 1-3, 5 and 7-20 are pending in the instant application. Claim 15 has been amended. The amendment is supported throughout the specification and is intended to establish consistency with Claim 1. No new matter is added by way of this amendment and its entry is respectfully requested.

### **I. Rejections under 35 U.S.C. §102**

Claims 1-3 and 7-20 stand rejected under §102(b) as being anticipated by Knowlton I (US 6,350,276). In response to Applicant's previous amendment to Claim 1 reciting "using an energy delivery device to apply a combination of electromagnetic energy treatments delivered to different tissue depths," the Examiner asserts that "[i]t can be seen from col. 15:25-60 of Knowlton I that the combination of electromagnetic treatment effects at different depths is made explicit." (Pages 6-7 of the instant Office Action).

Applicant respectfully disagrees and submits that the Examiner fails to identify specific teaching within col. 15:25-60 of Knowlton I that suggest a combination of electromagnetic treatment effects at different depths.

The section in Knowlton I referred to by the Examiner alludes to Figures 18a and 18b and describes primarily the monopolar system configuration. Applicants point to col. 15:49-55 which states, "As shown in FIG. 18a, in a monopolar RF energy system 26' current flows from RF energy source 22 to the RF electrode 18 also known as the active electrode 18 [positioned on the arm of the patient in the figure], into the patient and then returns back to RF generator 22 via a second electrode 19 known as a passive electrode 19, return electrode 19, or ground pad 19 which is in electrical contact with the skin of the patient (e.g the thigh or back)." Perhaps, the Examiner is referring to col. 15, lines 45-48 of Knowlton I which states, "Another embodiment of a monopolar system 26' involves the combination of RF lipolysis at the active electrode with skin contraction at the passive electrode tissue interface 19' and surrounding tissue."

Claim 1 of the instant application discloses a tissue treatment method using an energy delivery device to apply a combination of electromagnetic energy treatments delivered to different tissue depths at a specific target tissue site. This is carried out by delivering energy to

the tissue site at a first depth to achieve a first tissue effect, wherein the first tissue effect is a two dimensional tightening of the skin surface, followed by delivering energy to the tissue site at a second depth to achieve a second tissue effect; wherein the second tissue effect is a three dimensional tissue repositioning or inward contouring.

Contrary to the Examiner's assertion, the instant method is more than "a combination of electromagnetic treatment effects." The method of Claim 1 of the instant application differs from Knowlton I on at least two counts: 1) the instant method applies a combination of electromagnetic energy treatments and 2) the combination of electromagnetic energy treatments are applied to a specific target tissue site. Knowlton I does not teach that the "combination of RF lipolysis at the active electrode with skin contraction at the passive electrode tissue interface 19" are the result of a combination of electromagnetic energy treatments and may in fact be the result of a single electromagnetic treatment manifesting different tissue effects at two completely different tissue sites as a result of the widely spaced electrodes. This is not within the scope of the instantly claimed method. More importantly, delivering energy randomly to subjacent tissues as described in column 15, lines 25-60, of the '276 patent will not result in the desired two dimensional or three dimensional clinical effect (*i.e.*, skin rejuvenation, skin tightening or soft tissue contouring).

Claim 15 has been amended to incorporate a combination of electromagnetic energy treatments delivered to different tissue depths. The amendment is supported throughout the specification and is intended to establish consistency with Claim 1.

Applicant submits that Claim 1 and Claim 15 are not anticipated by Knowlton I. Claims 2-3, 7-14 and 16-20 are dependent from either Claim 1 or Claim 15 and therefore contain all the limitations of Claims 1 and 15. Therefore, it follows that Knowlton I does not teach or suggest all the limitations of Claims 2-3, 7-14 and 16-20. Thus, Applicant respectfully submits that the cited reference fails to provide or suggest the subject matter of Claims 1-3 and 7-20 and that the cited reference thus fails to anticipate the claimed invention. Accordingly, Applicant respectfully requests the withdrawal of the present rejection.

**II. Rejections under 35 U.S.C. §103**

Claim 5 stands rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Knowlton (USPN 6,350,276) (Knowlton I), as applied to Claim 1, and further in view of Knowlton (USPN 6,377,854) (Knowlton II).

Applicant respectfully disagrees and traverse the rejection.

As discussed above, and in the previously filed Responses of July 25, 2008 and February 13, 2008, Knowlton I does not disclose each and every limitation of Claim 1, nor those claims dependent thereupon, for at least the reasons made of record. Knowlton II does not cure the deficiencies of Knowlton I; as Knowlton II does not disclose a method for treating tissue using a combination of electromagnetic energy treatments delivered to different tissue depths.

Accordingly, the instant claims are not obvious over the above-cited references. Thus, Applicant respectfully requests withdrawal of the present rejection.

**CONCLUSION**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Please charge any fees, including fees for extension of time, or credit overpayment to Deposit Account No. **50-4634**, referencing Attorney's Docket No. **KNW-0019/123913-183032**.

Respectfully submitted,



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